



June 25, 2002

Ms. Kathryn H. Davis
Deputy City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2002-3462

Dear Ms. Davis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164827.

The Killeen Fire Department (the “department”) received a request for the ambulance report pertaining to the transport of a named individual. You state that you are making one billing record and the outpatient registration form available to the requestor. However, you claim that the remaining responsive records are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We also received written comments from the requestor. *See* Gov’t Code § 552.304 (providing that interested person may submit written comments stating why information at issue should or should not be released).

Initially, we note that the majority of the submitted records are completed reports that are subject to release pursuant to section 552.022(a)(1) of the Government Code. Section 552.022 makes “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body” expressly public, unless otherwise confidential by law or excepted under section 552.108. Gov’t Code § 552.022(a)(1). Section 552.103 is a discretionary exception under the Public Information Act and does not make information confidential. *See* Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body’s position in litigation and does not itself make information confidential). Therefore, you may not withhold the completed reports under section 552.103 of the Government Code.

is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

We note, however, that several of the completed reports are Emergency Medical Service ("EMS") records. Access to these types of records is governed by statutes other than chapter 552 of the Government Code. Specifically, section 773.091 of the Health and Safety Code (the "EMS Act") provides:

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Section 773.093 sets out the conditions for release of such confidential patient information. Generally, EMS patient records must be released upon the written consent of a personal representative of a deceased patient. *See* Open Records Decision No. 632 (1995) (defining "personal representative" for purposes of EMS Act). The written consent must specify (1) the information covered by the release, (2) the reasons or purpose for the release, and (3) the person to whom information is to be released. Health & Safety Code § 773.093(a). The marked EMS records may be released only as outlined under section 773.093.

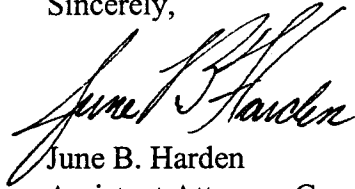
Finally, we address your claim under section 552.103 for the remaining documents. In order to establish a section 552.103 claim, the department must demonstrate that 1) litigation was pending or reasonably anticipated on the date the department received the request, and 2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). Section 552.103 requires concrete evidence that litigation may ensue. In Open Records Decision No. 638 (1996), this office stated that a governmental body may demonstrate that it reasonably anticipates litigation if it receives a notice of claim letter and represents to this office that the letter is in compliance with the requirements of the Texas Tort Claims Act, Civ. Prac. & Rem. Code, ch. 101, or an applicable municipal ordinance or statute.

You state that the department received a notice of claim letter regarding this incident on November 20, 2001, that complies with the notice requirements of the Texas Tort Claims Act. Furthermore, upon review, we find that the remaining documents are related to the anticipated litigation for purposes of section 552.103. Accordingly, the department may withhold the remaining documents under section 552.103(a).

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" and last name "Harden" clearly distinguishable.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/JKL/sdk

Ref: ID# 164827

Enc: Submitted documents

c: Ms. Jill Herz
160 Founders Square
900 Jackson Street
Dallas, Texas 75202
(w/o enclosures)